

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 Before The Honorable William Alsup, Judge
4

5 SONOS, INC.,)
6 Plaintiff,)
7 vs.) No. C 21-07559-WHA
8 GOOGLE, LLC,)
9 Defendant.)
10

San Francisco, California
Wednesday, June 1, 2022

12 TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC
13 SOUND RECORDING 7:57 - 8:29 = 32 MINUTES

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1 Wednesday, June 1, 2022

7:57 a.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Calling civil action 21-cv-07559,
5 Sonos, Inc. versus Google, LLC and all related cases.

6 Counsel, please state your appearances for the record,
7 beginning with counsel for plaintiff.

8 MR. ROBERTS: Good morning, your Honor. Clem
9 Roberts from Orrick Herrington for Sonos.

10 MS. BAILY: (Inaudible.)

11 THE COURT: Say that again.

12 THE CLERK: Approach the podium.

13 MS. BAILY: Melissa Baily for Google.

14 THE COURT: Okay. Welcome to you.

15 All right. This is a motion to file a third amended
16 complaint.

17 Go ahead and summarize your position.

18 MR. ROBERTS: Thank you, your Honor.

19 What I'd like to do, with your permission, is start
20 with your order dismissing the second amended complaint and
21 saying what we needed to do to amend. And then if your
22 Honor will allow me the time the point to you specifically
23 where in the proposed third amended complaint we did what
24 you asked us to do.

25 Would that be an okay way to proceed?

1 THE COURT: Well, how long will that take?

2 MR. ROBERTS: Five minutes.

3 THE COURT: Okay. You have five minutes.

4 MR. ROBERTS: Thank you, your Honor.

5 So in your order, your Honor -- and I'm looking at page
6 eight -- you said that where a defendant had filed or a
7 party had filed a declaratory judgment action, the accused
8 infringer has presumably already studied the patent versus
9 the accused product and indeed has sufficiently studied them
10 to assert under Rule 11 that the accused product does not
11 infringe the specified patent, regardless of whether a
12 cease-and-desist letter or other notice has been set.

13 And you therefore concluded -- and this is on page
14 10 -- that applying that principle, Sonos should be allowed
15 to counterclaim, that is, Sonos should be allowed to plead
16 the infringer's knowledge of the patent and that the
17 infringer has had sufficient time to analyze the product
18 vis-a-vis those patents, along with the other specifics
19 needed to show willfulness.

20 Accordingly, Sonos will be allowed to make the
21 willfulness allegation, either by way of counterclaim in the
22 dec relief action or by way of amendment in the Texas action
23 that has now come to this district.

24 And if I could point your Honor to the proposed amended
25 complaint, in particular to paragraph 55, you will see that

1 it says there -- this is new material shown in the
2 redline -- that on September 28, 2020, prior to Sonos's
3 commencement of the instant action on September 29, 2020,
4 Google initiated a declaratory judgment action in this
5 district asking the Court for an affirmative ruling that by
6 way of Google's making, using, selling, offering for sale,
7 and importation, Google does not infringe the '033, '966,
8 and '615 patents.

9 So we specifically added to the complaint an allegation
10 starting on paragraph 55 about their declaratory judgment
11 action.

12 And then we went on in the subsequent paragraphs, 56
13 and 57, to talk about the Rule 11 obligation to conduct an
14 investigation.

15 And then following that, starting in paragraphs 58, 59,
16 et cetera, we talked about the investigation that they
17 presumably did in some detail.

18 And that then results in paragraph 63, saying quote,
19 "In either case, as a result of Google's own investigation
20 to support the factual allegations it levied in its DJ
21 action, Google learned of the asserted patents and learned
22 of its alleged infringement."

23 So what we did is we took specifically your assertion,
24 your order that said that we could rely upon their DJ
25 complaint and their Rule 11 investigation showing advance

1 knowledge and sufficient time, and we put that specifically
2 in the complaint in these paragraphs.

3 Now, what I want to point out to your Honor is in their
4 opposition to our motion to amend, they did not challenge
5 the sufficiency of those allegations. If you look at their
6 opposition to our motion to amend, they make three
7 arguments, your Honor. And these arguments are on pages of
8 their motion -- and this is document 167.

9 The three arguments they make about futility start on
10 page six, go on to page seven and page eight. And the
11 argument they make -- starting on page seven, their first
12 argument is that the discussions -- the licensing
13 discussions that we argued about aren't sufficient. But
14 that's not what I'm relying on. Not relying on the
15 licensing discussions.

16 And the second argument it makes is about the '855
17 patent. I have separate arguments about the '855 patent,
18 but that's not what we're talking about here.

19 And, third, they say it could become futile, depending
20 upon what the appellate court does in the interlocutory
21 decision. And of course the appellate court did not grant
22 either of the parties interlocutory appeal. And so it did
23 not become moot.

24 So my point is, your Honor, you made an order. You
25 said we had to do. We did that exact thing. And their

1 opposition to our motion to amend doesn't challenge the
2 sufficiency of that thing.

3 That's my primary argument on the first two patents.

4 I'd like to add on the '885 patent, that we've added an
5 additional factual allegation as well. And this, your
6 Honor, shows up in paragraph 29.

7 And what we've done in paragraph 29 is -- again, this
8 is a new allegation. It says, "On January 8, 2021, counsel
9 sent Google's counsel a copy of an amended complaint and
10 supplemental infringement contentions detailing Google's
11 infringement of the '885 patent."

12 So this is a new allegation in paragraph 29 that on
13 January 8, 2021, we sent them supplemental infringement
14 contentions detailing their infringement of the '885 patent.
15 And that is important, your Honor, because the '885 patent
16 was not added to the case until five weeks later. It was
17 not added to the Texas case until February 17, 2021.

18 And one of the things you said in your order, your
19 Honor, was that, you know, the day before -- the notice we
20 gave them the day before we sued wasn't sufficient because
21 it didn't show sufficient time.

22 And here we have a five-week gap between us giving them
23 the detailed infringement contentions and the date the '885
24 patent was added to the case. And that five-week gap, your
25 Honor, we think is sufficient time.

1 Now, to be clear, I'm not asking you to hold that five
2 weeks is always sufficient. But what I would say is, here,
3 where you've got big law firms on either side, the parties
4 are all spun up, they're engaging in litigation back and
5 forth, if we give them detailed infringement contentions,
6 five weeks is absolutely a sufficient time to come to a
7 reasonable understanding and have that knowledge.

8 And so I would submit, both with respect to the '885
9 where we added this additional factual allegation about the
10 detailed infringement contentions we gave them in January
11 and with respect to the other two patents at issue in the
12 motion where we've specifically added the allegations about
13 reliance on the DJ complaint, that we've done exactly what
14 you order sets out and they haven't challenged it.

15 Now, I did want to come back to their argument about
16 the '885 patent and their opposition. This is the argument
17 I skipped over. It's on page eight of their opposition,
18 which is document 167.

19 Their argument here is that Google's original
20 declaratory judgment complaint did not seek a declaratory
21 judgment of noninfringement of the '885 patent.

22 THE COURT: Wait. Repeat that again.

23 MR. ROBERTS: Yes. So their argument is -- I'll
24 just read the whole thing. "Sonos's second theory that
25 Google's DJ action establishes knowledge of the '885 patent

1 is fatally deficient. Google's original DJ complaint did
2 not seek a judgment of noninfringement of the '885 patent."

3 This is bait and switch, because as to the '885, I am
4 not relying on the DJ action. As to the '885 patent, I'm
5 relying on the fact that five weeks before that patent was
6 added to the Texas case, we gave them notice of the patent.
7 And as newly alleged in paragraph 29 of the third amended
8 complaint, we specifically gave them detailed infringement
9 contentions as to the '885 patents five weeks before that
10 patent was added to the Texas case.

11 Okay. One more thing, your Honor --

12 THE COURT: You keep saying one more thing.

13 MR. ROBERTS: I do because they come to me one at
14 a time.

15 THE COURT: All right. This will be the last "one
16 more thing."

17 MR. ROBERTS: Thank you, your Honor.

18 I just want to touch on the fact that we have also
19 added -- your original order also dealt with contributory
20 infringement. And we have also added specific allegations
21 for the contributory infringement piece.

22 And I just wanted to point out to you where those were
23 so you have them in the record in case you were curious and
24 were looking. And those allegations, they're different but
25 I would, for example, start you with paragraph 143.

1 And if you turn to paragraph 143, you will see that we
2 did exactly what you said we should, which is in your order
3 you said you didn't identify the specific components and
4 then explain how those components have no substantial
5 noninfringing use.

6 And so, for example, your Honor, in paragraph 143 --
7 and this is all new material in the proposed amended
8 complaint -- we identified the specific components and then
9 in paragraph 144 we explain why those components have no
10 substantial noninfringing use.

11 It's right there. And they have not challenged the
12 sufficiency of those allegations in their opposition.

13 With that, I will --

14 THE COURT: All right. Thank you.

15 Let's hear from the other side. Ms. Baily.

16 MS. BAILY: Melissa Baily for the record.

17 Your Honor, I'll take the points in the order that they
18 were raised.

19 With respect to the first point -- and I too will start
20 with the text of your prior order -- your order made some
21 statements about what Sonos could add to its amended
22 complaint to establish knowledge with respect to the dec
23 relief action that Google filed.

24 Your order also said that that would not be enough for
25 willfulness. And why is that. That's because Sonos also

1 has to plead a specific intent to infringe.

2 Sonos has done the opposite of that in this draft
3 amended complaint. What Sonos has done is said that there
4 is an evidentiary basis, that Google had an evidentiary
5 basis to contend and believe noninfringement, and that that
6 evidentiary basis was so obvious that Google gleaned it
7 immediately and told this Court and Sonos about that belief
8 and its noninfringement position.

9 That belief and its noninfringement position have
10 abided to this day. Even if you look at the summary
11 judgment briefing on the showdown claims, Google has filed a
12 motion for summary judgment of noninfringement with respect
13 to both claims. Sonos only filed a motion for summary
14 judgment of infringement with respect to one of them.

15 Google from the moment that it received notice from
16 Sonos with respect to these patents has taken the position
17 that they are not infringed, and there is no allegation in
18 the third amended complaint or the draft of it that suggests
19 that Google acted against an objective chance that it would
20 be found likely of infringement.

21 They've actually alleged the opposite. They've alleged
22 in many, many paragraphs that Google investigated, that
23 Google talked to its engineers, that Google immediately
24 gleaned noninfringement because with respect to the patents
25 at issue here, your Honor -- I don't know if you've spent

1 time with them yet -- it was immediately apparent with
2 respect to some of the limitations that Google clearly did
3 not infringe, and with respect to other limitations it took
4 longer to sort of delve into it and come to the same
5 conclusion on multiple bases.

6 But it superficially was clear that Google didn't
7 infringe and also, frankly, that the patents were invalid.
8 I mean the zone team***17:49:45*** patents -- this is an
9 argument for another day, but it doesn't take much to read
10 those patents and come to the conclusion that the patents
11 are invalid under section 101 and numerous other sections of
12 the Patent Code.

13 THE COURT: What are you saying, that they --
14 they're presumed valid at this stage, aren't they? So are
15 you saying that their own complaint has to lay out and
16 negative -- negative the potential argument that the patents
17 are invalid?

18 MS. BAILY: No. But Sonos has alleged in its
19 complaint that Google acted with the specific intent to
20 infringe, right, so --

21 THE COURT: Don't they say that?

22 MS. BAILY: No. They say that Google was of the
23 immediate view that it did not infringe. They say the
24 opposite. They say that Sonos --

25 THE COURT: Show me where they say that.

1 MS. BAILY: So, for example, paragraph 58.

2 THE COURT: Wait, let me find the -- somewhere in
3 here I've got it.

4 Okay. All right. Proposed TAC, but I don't see any
5 TAC. This has been mislabeled, I'm sorry.

6 MS. BAILY: It's Exhibit 8.

7 THE COURT: Exhibit what?

8 MS. BAILY: 8.

9 THE COURT: What they told me is the third amended
10 complaint is a brief on appeal.

11 MS. BAILY: I can read it to your Honor. I mean
12 that paragraph is short.

13 THE COURT: No, I want to see if I can find it
14 elsewhere in here.

15 I'm sorry. Read it to me, please.

16 MS. BAILY: "Thus by presenting to the Court and
17 signing Google's DJ pleading on September 28, 2020, Google's
18 counsel represented that the factual contentions contained
19 therein had evidentiary support and were based on knowledge,
20 information and belief formed after an inquiry reasonable
21 under the circumstances."

22 And then the paragraphs go on to describe what would be
23 a sufficient investigation in order for Google to have made
24 those representations to the Court.

25 And what I'm saying, your Honor, is the allegations

1 here are that Google -- what your order said was: Look, if
2 Google filed a dec relief complaint, then they obviously
3 looked at the letter that was sent and had knowledge of the
4 patents, because they were able to look and file a dec
5 relief complaint of noninfringement.

6 But knowledge of the patents is insufficient. What you
7 also have to show is specific intent to infringe, and all
8 that's shown --

9 THE COURT: How does the plaintiff ever allege
10 that? No one is going to ever admit that. So there's --
11 but nevertheless willfulness allegations are allowed all the
12 time.

13 So you're asking them to plead something that's
14 impossible to prove at this stage.

15 MS. BAILY: I don't believe that's true, your
16 Honor. Let me give you a hypothetical.

17 THE COURT: All right. Explain to me why that's
18 not right.

19 MS. BAILY: Because take a hypothetical example
20 where a patent holder sends a notice letter and it's met
21 with silence. And then the patent holder follows up over
22 and over again and gets no response.

23 And finally, the patent holder says: Hey, we're filing
24 tomorrow because you're still doing what you're doing, and
25 obviously you haven't told us any reason why our allegations

1 are unfounded, so we're filing tomorrow.

2 And the accused infringer files a dec relief complaint.

3 Maybe in that hypothetical circumstance, depending on
4 the facts of the case, the patent holder can say they acted
5 with reckless disregard. They didn't even say anything to
6 us. They ignored us and they didn't say: Hey, look at all
7 these noninfringement positions we have or enter into any
8 kind of discussion.

9 And maybe you can draw an inference from that that
10 there was willful infringement.

11 But when an accused infringer comes back immediately
12 and says, "Look, we don't infringe. It is plainly obvious
13 on the face of these patents," then there is no specific
14 intent to infringe unless you can show otherwise.

15 THE COURT: All right. Hold that thought.

16 I want you to come forward on the plaintiff's side.
17 And you don't get to make a speech. You just get to answer
18 the one question.

19 What Ms. Baily is saying is that, okay, the declaratory
20 relief action proves knowledge -- not proves but is enough
21 to allege knowledge, but you have to go further and allege
22 specific intent to infringe.

23 And where do you allege that?

24 MR. ROBERTS: Yes, your Honor. Your order, page
25 four of 13, with respect to willfulness, this order agrees

1 that specific intent to infringe be pled with plausibility.
2 This means that knowledge of the patent and knowledge of
3 infringement must be pled with plausibility.

4 So your order specifically said that to plead specific
5 intent with plausibility, you must plead knowledge of
6 infringement and -- knowledge of the patent and knowledge of
7 infringement.

8 And where they filed the DJ action, they had knowledge
9 of the patent and knowledge of infringement.

10 THE COURT: Wait. But the DJ action said they did
11 not infringe, so what is your allegation that they had
12 knowledge of infringement?

13 MR. ROBERTS: Paragraph 63, your Honor, same
14 paragraph. So if you look, and -- 63 and 65.

15 So this is starting on line 11. "Rather than cease its
16 infringing activity, switch to an alternate design or
17 request to Sonos that Google ought to be given more time to
18 do the above, Google chose to continue to make, use, sell,
19 offer for sale and import the accused product, and thus to
20 continue with the allegedly infringing activity despite its
21 knowledge of the asserted patent and its knowledge of its
22 alleged infringement thereof."

23 So we specifically allege that they did that based upon
24 their pre-filing investigation.

25 And we went on, your Honor, in paragraph 65: "Nor has

1 Google at any point to date" -- that includes today --
2 "presented an articulable noninfringement or invalidity
3 position."

4 Sonos has asked for Google's noninfringement positions
5 via interrogatory. We go through on September 7, 2021.
6 Google answered only with a bald assertion that Sonos had
7 not established infringement, and for each independent claim
8 a conclusory statement that Google does not practice each
9 and every claim element.

10 So what she wants is a failure to come forward with
11 plausible infringement contentions. We have that in this
12 case.

13 THE COURT: Okay. Thank you.

14 Ms. Baily, all right, what would you like to say in
15 response?

16 MS. BAILY: I'd like to say two things, your
17 Honor.

18 First, the paragraphs that were just quoted actually
19 prove my point. Google doesn't infringe, so Google didn't
20 design around. Designing around would indicate a knowledge
21 of infringement, but Google doesn't infringe.

22 And with respect to the --

23 THE COURT: But they allege you infringe.

24 MS. BAILY: They allege we infringe, but there has
25 to be a specific intent to infringe on Google's part. If

1 it's the case, your Honor, that every time a party alleges
2 you infringe, you're willful if you don't change your
3 conduct, it assumes that there is actual infringement.

4 There's no room to say in response, "I don't infringe and
5 let me tell you why you shouldn't bring this complaint."

6 THE COURT: But isn't that for -- isn't that --
7 you fight that out before the jury, don't you?

8 MS. BAILY: Well, I guess --

9 THE COURT: Under your theory, even if they gave
10 you a detailed letter explaining why you infringe, then you
11 would come back, just say, "No, no. That's not correct.
12 We're not going to change our product. We're going to forge
13 right ahead," and then you would say, "Well, you didn't
14 plead specific intent.

15 MS. BAILY: Well, your Honor, let me say this.
16 What I'm proposing is a way that your order -- it's
17 consistent with your order and also makes willfulness the
18 exception rather than the rule, which is the intent, right?
19 Willfulness is supposed to be for cases where an accused
20 infringer acts like a pirate wantonly, as they say, right?

21 Now, there's no allegation here when Google immediately
22 understood that it didn't infringe and represented that to
23 the Court. And it's detailed in the complaint that we must
24 have and did have an evidentiary basis for that position.
25 That is contrary to proving up willfulness.

1 It's the opposite. It's the same way in which you can
2 rely on an opinion of counsel if you're before the jury.
3 And there aren't -- there may be cases where you can file a
4 dec relief claim and you can say noninfringement and there
5 might still be a viable dispute of fact that can be pled
6 about whether truly there was or wasn't a specific intent to
7 infringe.

8 But this is not that case when all Google has done is
9 say that it doesn't infringe.

10 THE COURT: All right. What do you say about the
11 '885?

12 MS. BAILY: So with respect to the '885 patent,
13 obviously, the timeline of events with respect to that
14 patent is completely different.

15 Google filed its dec relief in September 2020. Sonos
16 filed its complaint in September 2020. That happened. Then
17 the '885 -- or the '855? Now, I don't know which one it is.
18 But that patent issued in November 2020, so after the dec
19 relief cause of action complaint and Sonos's complaint was
20 filed.

21 THE COURT: But they gave you five weeks to
22 evaluate it before they moved to amend, and wouldn't that
23 be --

24 MS. BAILY: Well --

25 THE COURT: Couldn't the jury decide that was

1 enough time?

2 MS. BAILY: No, because, your Honor, the reason
3 why gave us the amended complaint is because they had a meet
4 and confer requirement under the rules of the Western
5 District of Texas.

6 THE COURT: But so what? That still gave you five
7 weeks.

8 MS. BAILY: They gave us five weeks. They said --
9 so I'll point you in the record. It's at docket 39-3. This
10 was not a "Hey, here's notice," you know, "What do you
11 think?" This was a "Hey, we are amending our complaint and
12 let me satisfy my local rule obligation to do that."

13 I mean if that was enough, following the rules of the
14 Court to amend your complaint to establish willfulness, that
15 can't be. I mean --

16 THE COURT: Why not? I mean let's just say you
17 looked at it and you said, "My god, we do infringe this one.
18 We'd better change our product."

19 MS. BAILY: Right, so --

20 THE COURT: And if you don't do that, why wouldn't
21 that have been --

22 MS. BAILY: Exactly, exactly. If that's what we
23 did, then there would be a willfulness claim. It's all
24 backwards, your Honor. I mean they are satisfied --

25 THE COURT: But they are asserting willfulness --

1 MS. BAILY: Right.

2 THE COURT: -- for '885.

3 MS. BAILY: Right. Based on fulfilling a local
4 rule that said that to amend their complaint they had to
5 share it with us and meet and confer first, in the context
6 of litigation already.

7 THE COURT: Well, you say that like it's shocking,
8 but I'm not so sure that's shocking.

9 MS. BAILY: Well, it's not shocking, but that's
10 the problem. Willfulness is alleged in every single case.
11 Willfulness is supposed to be the exception.

12 And it's not a matter that you can't amend later if you
13 find in discovery that there actually is willful conduct.
14 If you're doing discovery of infringement, then you're going
15 to discover things about infringement. And if there's a
16 case to be made for willfulness, then you move to amend.

17 But this process of just every case is willful because
18 we're following the local rules and we have to send you the
19 amended complaint, or you know, we're going to say we're
20 going to file tomorrow and create a willfulness claim by
21 sending a letter and saying, "Hey, we're going to file
22 tomorrow."

23 I mean that's I thought what sort of your order and the
24 general thrust of the cases have been trying to rein in, and
25 I think appropriately so, given the high standard for

1 willfulness.

2 THE COURT: All right. You get to make one more
3 point, and then I've got to go to the next case.

4 MS. BAILY: Okay. So my last point is on the
5 indirect infringement issue.

6 So you'll see that what Sonos is done in its amended
7 complaint is double down basically on what your Honor said
8 was not appropriate.

9 So in your order, your Honor said you're looking at the
10 apps as a whole when you're looking at whether there are
11 substantial noninfringing uses. And that's not proper
12 because the app as a whole is YouTube, but the function is
13 casting YouTube onto a second device. That's not all of
14 YouTube as a feature that can be added or removed.

15 And so what your Honor said in your order was go back
16 and look at the features. And what Sonos has done is
17 doubled down on the app side and added a lot of allegations
18 on the app as a hole.

19 And then in the alternative, it argues about the
20 feature, but all it says with respect to the feature, this
21 alternative argument, is just a statement that the accused
22 features cannot be used for purposes other than
23 infringement.

24 It's the same conclusory statement that you said was
25 too conclusory in your order with respect to the apps. And

1 so if you look, for example, at paragraph 146, you will see
2 that the only time that an allegation is made with respect
3 to the feature, the component, as adequately pled, is just
4 the same conclusory legal allegation that your Honor said
5 was too conclusory in your order. And those paragraphs are
6 112, 146, 181 and 214.

7 So in our view, with respect to indirect infringement
8 for this additional reason, the third amended complaint has
9 not cured the problem.

10 THE COURT: Okay. Thank you.

11 I'll give you one minute for rebuttal.

12 MR. ROBERTS: Thank you.

13 None of the arguments she made today are in their
14 brief.

15 Two --

16 THE COURT: What are you talking about? Is that
17 true?

18 MR. ROBERTS: Your Honor, look at their futility
19 argument. I talked you through the three futility arguments
20 they made. They didn't make any argument about specific
21 intent. They didn't make any argument about indirect
22 infringement. It's not in their opposition.

23 Two, they said willfulness is only for rare cases where
24 you act like a pirate. That's a misstatement of the law.
25 We briefed this the last time around. This was Halo and I

1 believe Eko Brands. The piracy applies -- comes in once the
2 Court has made a determination that the jury comes back with
3 willfulness and the Court is looking at exceptional
4 misconduct, at that point the Court asks the exceptional
5 misconduct case question as part of the decision whether or
6 not to award attorneys' fees.

7 So she misstated the law.

8 And then three, what is the purpose of the meet and
9 confer requirement? The purpose of the meet and confer
10 requirement is the same as the purpose of cease and desist,
11 which is we don't want people coming into court and just
12 filing these things. We want people to give advance notice.

13 And the local rules do not require us in Texas to give
14 them our contentions. So when we sent them this, they said
15 part of the meet and confer requirement, we went above and
16 beyond the meet and confer requirement and gave them
17 specific contentions as to infringement, which were not
18 required.

19 And that created knowledge of the way in which we're
20 claiming that they infringed, which they then ignored for
21 five weeks.

22 Finally, for indirect infringement, your Honor, we did
23 not just do what she said we did. And if you look
24 specifically, we explained why the app is an infringement
25 component.

1 Very briefly, the claims of this patent are directed to
2 a device which is capable of performing certain features.
3 The app is a piece of software that gets loaded on the
4 device.

5 There is no other purpose for the app other than to
6 load it on a device. And once you load the app on the
7 device, between the device and the app you have created an
8 infringement system.

9 So we specified that the app is the accused component,
10 that that component has no purpose other than to be loaded
11 on the device, and that once you have done that, you've
12 created an infringing component.

13 And that is exactly what the Court told us we had to
14 do, which is explain why the thing that we were pointing to
15 had no alternative feature.

16 And then we went on and made the same argument for the
17 cast functionality itself in the alternative. So we
18 explained it with respect to the accused component, which is
19 software, and then we explained it again for the
20 particularly accused function within that software.

21 We've done it at two levels.

22 Thank you.

23 THE COURT: All right. I don't have a ruling just
24 yet. I am in the process of transitioning this entire case
25 to a different law clerk, and I need some assistance from

1 that new law clerk to help me with these issues.

2 Good luck to both sides. Thank you.

3 MR. ROBERTS: Can I ask a brief scheduling
4 question, your Honor?

5 THE COURT: I don't know, what's your question?

6 MR. ROBERTS: My understanding is you have a
7 criminal trial going on next week. And we also have summary
8 judgment scheduled for the morning. Is that something you
9 anticipate moving to the afternoon or bumping out --

10 THE COURT: I'll have to move it for sure. I
11 don't know the answer. I hadn't even thought -- we'll have
12 to discuss when we're going to do that.

13 MR. ROBERTS: Thank you, your Honor.

14 THE COURT: Thank you for bringing that up. All
15 right.

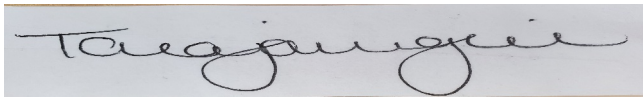
16 Okay. Thank you. Good luck to both sides.

17 (Proceedings adjourned at 8:29 a.m.)
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1 CERTIFICATE OF TRANSCRIBER

2
3 I certify that the foregoing is a true and correct
4 transcript, to the best of my ability, of the above pages of
5 the official electronic sound recording provided to me by
6 the U.S. District Court, Northern District of California, of
7 the proceedings taken on the date and time previously stated
8 in the above matter.

9 I further certify that I am neither counsel for,
10 related to, nor employed by any of the parties to the action
11 in which this hearing was taken; and, further, that I am not
12 financially nor otherwise interested in the outcome of the
13 action.

14 

15
16 Echo Reporting, Inc., Transcriber

17 Thursday, June 2, 2022
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